

WEBINAR WEDNESDAYS



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FUNDAMENTALS OF CROSS-EXAMINATION: METHODS AND TACTICS

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Fundamentals of Cross-Examination: Methods and Tactics

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1

1

GOAL

Enable you to more effectively and persuasively conduct cross-examination

Cross Exam To-Do List

- Ask leading questions
- Don't sound stupid
- Make witness cry
- Score home run

2

2



Most attorneys not very good at it

Some are good

Few are excellent

3

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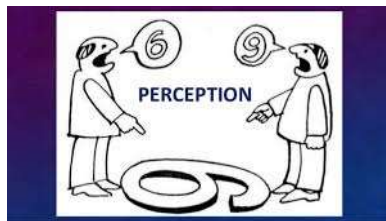


Most witnesses are not as good as any of the attorneys

4

What is the TRUTH?

Often it is a matter of PERCEPTION



Psychology Today

5

Purposes of Cross

Legal

- Good faith quest for ascertaining truth

Practical

- Help ourselves
- Undermine or destroy direct testimony

7



8

"The commander must decide how he will fight the battle before it begins. He must then decide how he will use the military effort at his disposal to force the battle to swing the way he wishes it to go; he must make the enemy dance to his tune from the beginning and not vice versa."

- Viscount Montgomery of Alamein

9

Common Defense Theories

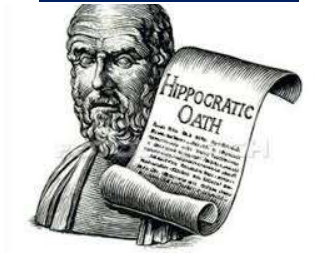
Identification

- SODDI
- Some Other Dude Did It

Confession and Avoidance

- Eliminate facts
- Add new facts

10

Rule #1

11

To Cross or Not to Cross,
That is the Question



13

Reasons to Cross Examine**Gain Concessions****Attack Credibility**

14

The diagram consists of two rectangular boxes. The box on the left is yellow and contains the text 'Primary argument' followed by a bulleted list. The box on the right is dark blue and contains the text 'Rebuttal argument' followed by a bulleted list. A horizontal line connects the two boxes, with a small circle at the center of the line.

Primary argument

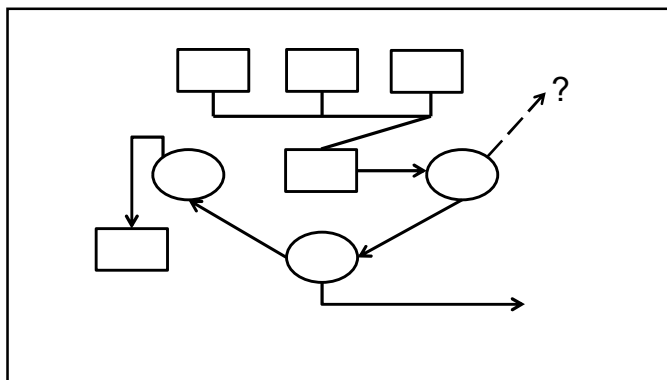
- My case theory wins because.....
 - Factual concessions by opposing witnesses used to prove your theory

Rebuttal argument

- Their case theory is unreasonable and not worthy of belief because.....
 - Impeachment attacking witness or facts

18

15

[illegible]

16

[illegible]

FOCUS

Advance case theory

- Opportunity to advance own theory
- Caress before Slap
- Concessions may outweigh impeachment

17



Concessions



18

18

Concessions

Look for areas favorable to your case theory

- Keep focus on theory
- Additional concessions
- Repeat favorable testimony

19

19

Advanced Prep

Easily prepared

- Even with only rudimentary knowledge of what witness might say

- What must witness admit to?
- Certain things cannot be denied

20

20

Focus

Eliminate areas of dispute

- Find the common ground
- Think in terms of mini-stipulations

Makes your and jury's job easier

21

21

Concessions

Reiterating and
Emphasizing Facts

22

22

Concessions

New Facts

23

23

Concessions

Alternative Facts

24

24

Concessions

Deleted Facts

25

25

Concessions

Mistakes

26

26

Impeachment

27

Credibility

Look for reasons why their witness
or case theory is unreasonable and
jury should not believe it.
Or not like the witness



28

Not necessary to show witness overtly lied



Only that testimony is

- Questionable
- Unreasonable
- Untrue

29

Attack Credibility by Examining

Prejudices and Bias
Some Miscellaneous Impeachment
Vantage point

30

30

Motive for Prejudice Bias

- | | |
|--|--|
| <ul style="list-style-type: none"> • Lay Witness • Relationships • Personal beliefs • Grudge | <ul style="list-style-type: none"> • Experts • Money • Ego • A "cause" |
|--|--|

31

31

Establish the possible bias

Not necessary to confront witness

Let jury judge the credibility

32

32

Some Other Things

- Prior Behavior
- Previous Testimony
- Behavioral Inconsistencies
- Competency

33

Impeachment

Prior Behavior

Everything ever done impacts the future

34

Impeachment

Previous testimony

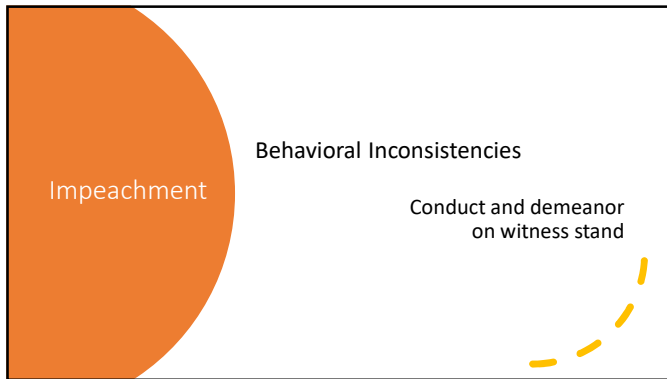
- Prior inconsistent statement
 - Having to choose which version is correct
- Prior consistent statements

35

Impeachment

Behavioral Inconsistencies

Conduct and demeanor
on witness stand

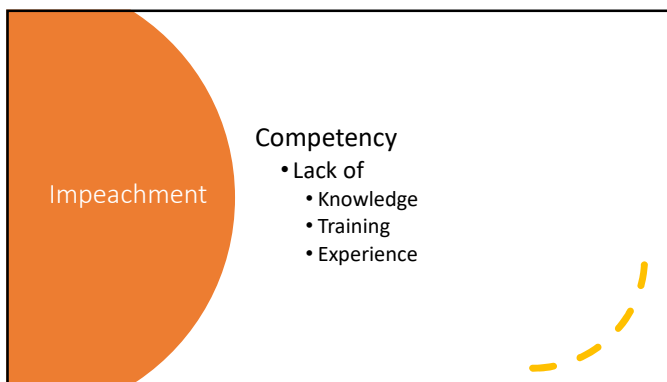


36

Impeachment

Competency


- Lack of
 - Knowledge
 - Training
 - Experience



37

Vantage Point

- Location
- Distance
- Angle
- Lighting
- Obstructions



38

Vantage Point

Ability to perceive	Ability to Perceive and Remember
Obstructions	Understanding
Lighting	Cognition
Physical limitations	Memory

Position
Distance
Angle

39

39

Ability to Perceive

What allowed or interfered with ability to perceive and/or recall?

40

40

Vantage Point

Ability to Perceive

- Physical limitations
- Mental limitations

42

42

Position

Compare and contrast one witness v another
(or even same witness)

- Which had better angle
- Which closer

44

44

Get the
Concession

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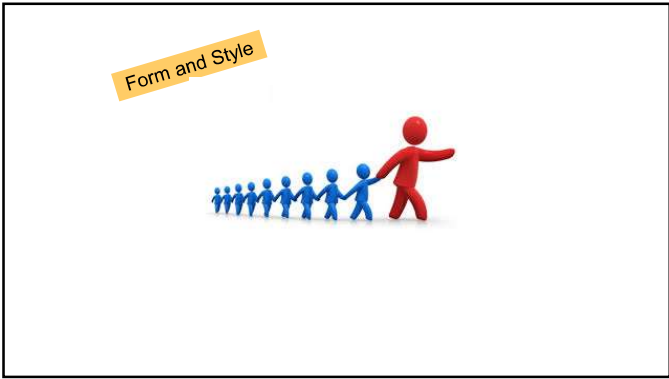
Find a way to repeat
your theory of the
case

47

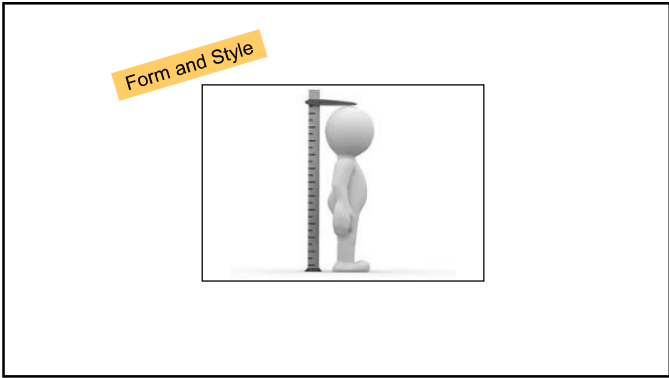
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49



51



52

You Heard,
But
Did You
Listen?

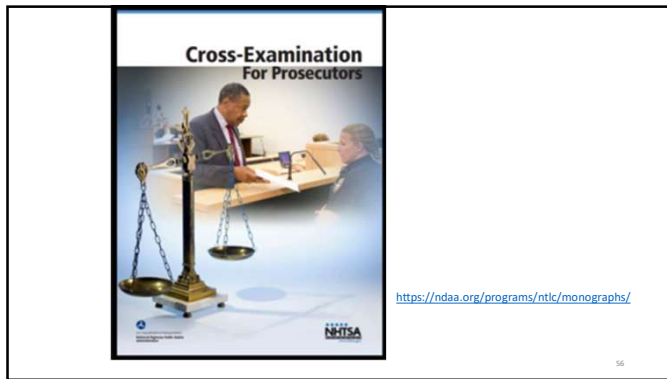
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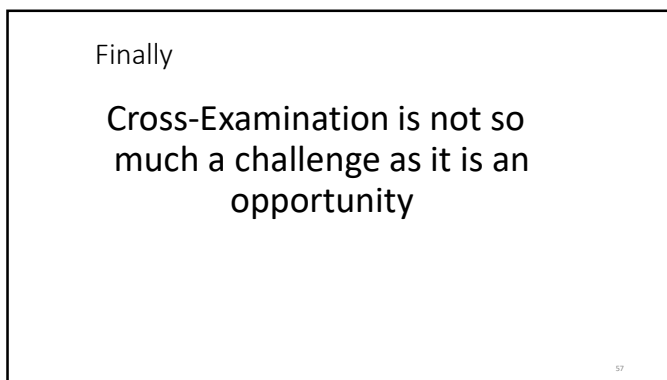
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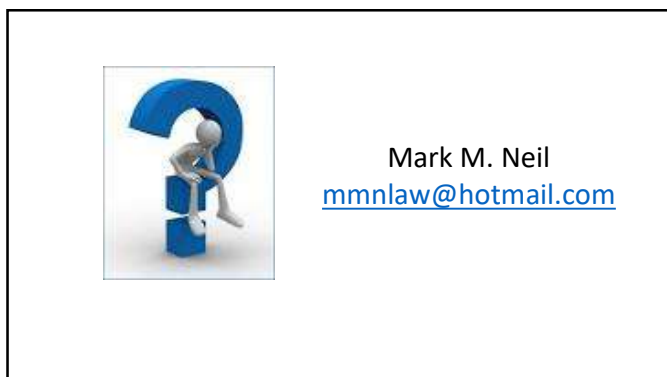
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57



58
